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SHAHID BUTTAR FOR CONGRESS COMMITTEE and
SHAHID BUTTAR

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

SHAHID BUTTAR FOR CONGRESS
COMMITTEE and SHAHID BUTTAR, an
individual;

Plaintiffs,

vs.

HEARST COMMUNICATIONS, INC., a
Delaware corporation; and DOES 1
through 5;

Defendants.

CASE NO. 3:21-cv-05566-EMC

**PLAINTIFFS' OBJECTIONS TO
DEFENDANT'S REQUEST
FOR JUDICIAL NOTICE**

Hearing Date: Dec. 15, 2022, 1:30 pm

JUDGE: Hon. Edward M. Chen
COURTROOM: 5 – 17th Floor

Plaintiffs hereby **object to** Defendant's Request for Judicial Notice. As the Ninth Circuit recently admonished in *Khoja v. Orexigen Therapeutics, Inc.*, a district court is generally barred from "consider[ing] material outside the pleadings when assessing the sufficiency of a complaint under Rule 12(b)(6) of the Federal Rules of Civil Procedure."¹ Although judicial notice may be taken of extrinsic documents, the Ninth Circuit has admonished that the "*overuse and improper application of judicial notice can lead to unintended and harmful results*".²

¹ *Khoja*, 899 F.3d at 998 (italics added).

² *Id.* at 998 (italics added).

While it may take judicial notice of “matters of public record”, a court “cannot take judicial notice of disputed *facts* contained in such public records.”³ Any request for judicial notice must provide the “*purpose* for which [it] was offered.”⁴ To that end, a court must be apprised as to which *specific* “fact or facts” for which judicial notice is requested.⁵ Moreover, any such evidence must be relevant⁶ and not inflict the opposing party with undue prejudice.⁷

Plaintiffs object to **Exhibits A through G** of the Ibarguen Declaration, as follows:

Exhibits A-C & I. Plaintiffs object to taking judicial notice of Exhibits A through C and I on two grounds. *First*, Defendant fails to apprise the Court as to which *specific* “fact or facts” for which it seeks judicial notice. *Second*, Plaintiffs object to the extent that Defendant seeks judicial notice of disputed facts.

Exhibit E. Plaintiffs object to taking judicial notice of Joe Eskenazi’s July 21, 2020 article published in *Mission Local*, on three grounds. *First*, the article is not relevant, for Plaintiffs’ Complaint neither cites nor quotes from Mr. Eskenazi’s article. *Second*, Defendant fails to apprise the Court as to which *specific* “fact or facts” for which it seeks judicial notice. *Finally*, Plaintiffs object to the extent that Defendant seeks judicial notice of disputed facts.

Exhibit F. Plaintiffs object to taking judicial notice of Tim Redmond’s July 21, 2020 article published in *48 Hills*, on three grounds. *First*, the article is not relevant, for Plaintiffs’ Complaint neither cites nor quotes from Mr. Redmond’s article. *Second*, Defendant fails to apprise the Court as to which *specific* “fact or facts” for which it seeks judicial notice. *Finally*, Plaintiffs object to the extent that Defendant seeks judicial notice of disputed facts.

Exhibit G. Plaintiffs object to taking judicial notice of Elizabeth Croydon’s self-published

³ *Id.* at 999.

⁴ *Khoja*, 899 F.3d at 1000 (italics added).

⁵ *Id.* at 999.

⁶ *E.g.*, *Cuellar v. Joyce*, 596 F.3d 505, 512 (9th Cir. 2010).

⁷ *E.g.*, *Keyes v. Coley*, 2011 U.S. Dist. LEXIS 59625, at *8-*9 (E.D. Cal. June 2, 2011).

1 *Medium* post from July 21, 2020, on three grounds. *First*, Ms. Croydon’s self-published post,
2 which contains the allegations of sexual harassment at issue, does not qualify under FRE 201 –
3 because her self-published post is not a source “whose accuracy cannot reasonably be
4 questioned”. *Second*, Defendant fails to apprise the Court as to which *specific* “fact or facts” for
5 which it seeks judicial notice. *Finally*, Plaintiffs object to the extent that Defendant seeks judicial
6 notice of disputed facts.
7

8 Accordingly, Defendant’s infirm Request must be **denied** as to the foregoing documents,
9 and any part of its papers relying on such barred evidence must be **disregarded**.
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12 DATED: Oct. 21, 2022

13 BUSINESS, ENERGY, AND ELECTION
14 LAW, PC
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17 By: /s/ Gautam Dutta

18 GAUTAM DUTTA, ESQ.

19 Attorneys for Plaintiffs

20 SHAHID BUTTAR FOR CONGRESS

21 COMMITTEE and SHAHID BUTTAR
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